NOTES OF CASES.

Liability of Restaurant for Serving Tainted Food.—One West on a certain occasion went into a restaurant or cafe for his noonday lunch. The articles of food and drink served to him were scrambled eggs, brains, ham, bread and butter, and a glass of tea. According to the evidence, between 2 and 3 o'clock of that afternoon he was taken violently ill, and had symptoms of suffering from a very severe case of ptomaine poisoning. He became unconscious for a time, and continued to suffer from this illness for months afterward. The physician who attended him diagnosed the case as one of ptomaine poisoning resulting from eating tainted brains. Later he sued the owner of the restaurant, and recovered a judgment for $500. On appeal to the Court of Appeals of Alabama in Pantaze *v.* West, 61 Southern Reporter, 42, the court holds that the keeper of a public restaurant must use due care to see that the food served to his guests is fit and may be eaten without causing sickness because of its unwholesome condition, and he is liable for any negligence proximately resulting in injury to a guest, and the question of defendant's negligence was for the jury. The judgment is affirmed.

Technicality Defined.—Oklahoma once had the reputation of being part of the wild and woolly west, where six-shooters were customary adjuncts to the masculine costume; and many a citizen who had killed his man went his way respected and unmolested. But those days are past. Ryan *v.* State, 129 Pacific Reporter, 684, is a good example of the way the Oklahoma Criminal Court of Appeals does business. "Granting," they say, "all that is contended for by counsel for appellant, the most that could be claimed on his behalf is that a mere irregularity occurred in the trial of the cause. The objection made is a purely abstract, technical proposition. A technicality has been well defined as a microbe which, having gotten into the law, gives justice the blind staggers. This court from the first announced that it would not reverse a conviction upon any technicality that did not involve a substantial right."

Judicial Knowledge of Poker.—Should a court judicially know that poker is played with cards and that it is a game of chance? In State *v.* Solon, 153 Southwestern Reporter, 1023, defendant was charged with gaming. On appeal the Supreme Court of Missouri "looked in vain in the record for some testimony that the game of poker alleged to have been played upon the table in question was played with cards." The proof simply showed that a table covered with cloth constituted the plane surface upon which the game of poker was played. No chips or other paraphernalia and no cards

were offered in evidence, or shown by the evidence to have been used in playing the game of poker. The court holds that some proof should have been adduced, either orally or by offering the cards themselves in evidence, that cards were used on the table in playing the game, "but there is not one word of proof as to the use of common playing cards or any other cards on this table. In the absence of a showing that the game of poker was played with cards, we will not take judicial knowledge that poker is a game of chance."

Consumption as Ground for Divorce.—Is a disease such as pulmonary consumption a sufficient cause for separation a mensa et thoro? In Abramowitz *v.* Abramowitz, 140 New York Supplement, 275, the parties intermarried in 1912 and the wife returned to her parents after five days. The wife's action for separation is based on the ground of cruelty and conduct rendering it unsafe for her to cohabit with the defendant in that his state of health is such that it is "impossible, unsafe and unhealthy for her to cohabit with him." She says that he is troubled with a violent cough at night accompanied by expectoration of blood and that the physician called in attendance stated that it "was caused by hemorrhages" The New York Supreme Court, Special Term, says: "Assuming for the sake of the argument that the facts point to the existence in the defendant of the disease commonly known as pulmonary consumption, which is very generally held to be both communicable and dangerous to health, its existence prior to the time of the marriage is not claimed, nor that any false representations as to the defendant's state of health were made, so as to induce the plaintiff to wed, though, of course, had there been, it would not be available in the present form of action. The plaintiff apparently had an ample opportunity for making inquiries as to the health of the defendant before marriage as she had as to his earning capacity. Perhaps the exercise of as great caution regarding the former as was paid to the latter consideration would have saved both parties trouble and unhappiness." The holding of the court is thus summarized in the following lines: "If during marriage disease attacks one of the spouses, it is not the one so afflicted who is guilty of legal cruelty. It is rather the other one who seeks on that ground a judicial separation."